No. 307

In the Supreme Court of the United States

October Term, 1943

SUN PUBLISHING COMPANY, PETITIONER

v.

L. METCALFE WALLING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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CITATIONS

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L. METCALFE WALLING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The findings of fact and conclusions of law of the district court (R. 610–632) are reported in 47 F. Supp. 180–192. The opinion of the circuit court of appeals (R. 652–659) is reported in 140 F. (2d) 445.

JURISDICTION

The judgment of the circuit court of appeals was entered on January 24, 1944 (R. 651). The petition for writ of certiorari was filed on March 18, 1944. Jurisdiction of this Court is invoked

under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether a decree enjoining a newspaper publisher, from making underpayments of wages in violation of Sections 6 and 7 of the Fair Labor Standards Act infringes the freedom of the press guaranteed by the First Amendment.

2. Whether Congress infringed the First and Fifth Amendments by excepting from the scope of the Act small newspapers with weekly or semi-weekly local circulation.

3. Whether Congress has the power, under the commerce clause, to apply the Act to petitioner's newspaper publishing business, and whether the Act does apply to that business.

4. Whether petitioner is exempt from the application of the Act as a "service establishment the greater part of whose * * * servicing is in intrastate commerce" (Section 13 (a) (2)).

5. Whether the Administrator's regulations defining "employee employed in a bona fide executive, * * * professional * * * capacity" (Section 13 (a) (1)) as applied to petitioner's employees are arbitrary, capricious, and unreasonable, and therefore void.

6. Whether the record supports the affirmance, by the circuit court of appeals, of the district court's decree enjoining violations of the record-keeping provisions of the Act (Sections 15 (a) (5) and 11 (c)).

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

Article 1, section 8, clause 3, and the First and Fifth Amendments of the Constitution are set forth on page 33 of the Appendix to petitioner's brief; the Fair Labor Standards Act (52 Stat. 1060, 29 U. S. C. 201 et seq.) is set forth on pages 35–47 of the Appendix to petitioner's brief; the regulations of the Administrator promulgated under the authority of Section 13 (a) (1) of the Act and defining "bona fide executive, * * * professional * * * capacity" are set forth on pages 49–55 of the Appendix to petitioner's brief.

STATEMENT

Petitioner is engaged at Jackson, Tennessee, in operating a radio station and publishing a daily and Sunday newspaper named "The Jackson Sun." The newspaper's daily paid circulation was 8,461 copies in 1938, 8,789 copies in 1939, and 9,127 copies in 1940 and 1941. Its paid Sunday circulation was about 11,000 copies. During these years it published and shipped daily (excluding Saturday) to points outside the State of Tennessee about 200 paid copies During the period in which violations of the Fair Labor Standards Act were alleged, approximately 150,000 paid copies of "The Jackson Sun" were shipped outside of the State. This computation does not include complimentary copies sent outside of the State. (R. 372, 373, 450.)

The newspaper is a member of the Associated Press and is linked to its nation-wide news-gathering and transmitting network by means of a teletype which that association maintains in its office. Through this medium it receives reports, stories, market quotations and financial news, the greater part of which originates in States other than the State of Tennessee. (R. 352, 353, 354, 453.) This material is incorporated into the newspaper immediately after its receipt in accordance with usual publishing procedures (R. 244, 357, 358, 453, 454). In conformity with the requirements of the by-laws of the Associated Press (Art. 8, Sec. 3,) the newspaper furnishes that Association with local news; a few hundred words are transmitted each week (R. 355, 356, 453). Petitioner regularly receives over the wires of the Southern Bell Telephone and Telegraph Co. news gathered by the world-wide facilities of the United Press. This service is maintained primarily for its radio activities, but the newspaper has the right to, and occasionally does, use United Press copy. (R. 358, 359, 454.) The original of the transcribed material goes to the radio station and a "drop copy" is sent to the newspaper (R. 358).

The newspaper also receives from out of the State, for incorporation into its daily or Sunday

editions, miscellaneous special features and articles.[1]

The newspaper carries the national advertising of out-of-State producers or distributors solicited for it by The Branham Company of Chicago, Illinois (R. 365, 456) amounting to approximately $12,000 per year (R. 364–365), which is about 10 percent of its total advertising revenue (R. 456).[2]

[1] Each week petitioner receives from Peoria, Illinois, a four-page comic supplement which is "stuffed" into the Sunday newspaper and distributed to subscribers both within and without the State (R. 363, 456). The N. E. A. Service, Inc., of Cleveland, Ohio, furnishes, for incorporation into the daily newspapers, "Medicine in the News," by Morris Fishbein; "With Edson in Washington," by Peter Edson; crossword puzzles, serial stories, comic strips, etc. The King Features Syndicate of New York City transmits, for the same purpose, "News Behind the News," by Paul Mallon; "Human Side of the News," by Edwin C. Hill; "Behind the Scenes in Hollywood"; "Broadway Medley"; "Contract Bridge," by Eli Culbertson; "Arthur 'Bugs' Baer," and comics. (R. 359, 363, 455.) Pictures and other features are furnished by World Wide News Service in New York and the Central Press Association in Ohio (R. 360, 455). It also receives full prepared items and articles for the radio page on programs for the coming week supplied by the Mutual Broadcasting System, from either New York or Chicago (R. 362).

[2] Orders and instructions for advertising, mats or electrotype plates, are transmitted directly to the newspaper from practically every State in the Union (R. 368, 456). "Tear sheets" are sent by the newspaper to advertising agencies outside the State, as proof of publication of the advertisements (R. 368). The newspaper is also a regular subscriber to the service of the Meyer-Both Company of New York, which furnishes, from out-of-State sources, mats for printing pictures to illustrate advertisements and catalogues from which local merchants make selections for their advertising (R. 383, 457).

The advertising activities of the newspaper necessitate a good deal of interstate correspondence, communication and shipment of materials (R. 369, 456).

Substantially all of the materials used by petitioner in printing its paper (newsprint, inks, linotype metal, stereotype metal, and mats) are shipped to petitioner's plant from outside the State (R. 457–458). The cores of the newsprint rolls, empty drums of ink and the dross of linotype and stereotype metal are returned by the newspaper to the out-of-State manufacturers (R. 458).

Additional interstate activities arise out of the relationship between appellant's radio station and its newspaper. Although the staffs of the radio station and newspaper are stated to be separate (R. 222), some employees perform services for both departments (R. 501) and news is exchanged between them. The United Press equipment is located in the radio station (R. 359), and the incoming information is there received and passed on to the newspaper (R. 358). The Associated Press equipment, on the other hand, is located in the newspaper offices (R. 244, 453). The local news that is broadcast over the radio station "comes out of the Jackson Sun" (R. 213). Announcers receive copies of the paper on which newspaper employees have indicated the news of interest (R. 213). In some cases the news re-

porter's original transcript is provided and on occasions the newspaper reporters telephone in rush news such as election returns (R. 213). It was stated that whole paragraphs are occasionally read from the paper and that the newspaper is the source of this local news (R. 94, 373–374).[3]

The employees involved in this suit perform the various tasks incident to the activities described. They include the writers and reporters who receive and prepare headlines for the news coming over the Associated Press wire (R. 243, 244), and who gather and compose the news stories (R. 386, 243, 245) and make up news sections such as the sports page and the theatre page (R. 243, 386); the linotypers and stereotypers (R. 185, 426, 553) and the workers who cast the cuts and mold the metal plates and operate the press (R. 309, 426); employees performing the subscription and circulation functions (R. 437–438); the mail-room employees who set

[3] Petitioner states "The radio operations of petitioner are not involved in this proceeding" (p. 2). The Administrator's complaint alleged violations of the Act with respect to its radio employees (R. 2, 3, 4, 6); the district court found that violations had occurred with respect to such employees (R. 611–614); the district court judgment does not exclude such employees (R. 632–634); and, indeed, petitioner admitted the interstate character of the activities of its radio employees (R. 60–61, 611). Petitioner's quoted statement, therefore, must be taken to mean that it concedes the propriety of the injunctive relief granted by the district court with respect to its radio employees.

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up galleys, address, wrap, and mail the out-of-town papers, including the papers to out-of-State subscribers (R. 236, 415), and who "stuff" into the Sunday papers the printed sections received from extrastate sources (R. 238); employees who handle the correspondence and keep records relating to national advertising (R. 185–186, 366–369); and the cashier and bookkeeper who maintain records and accounts both for the newspaper and the radio departments (R. 500–501).

The district court found that there were repeated violations of the minimum wage provisions of the Act as to certain named employees in both the radio and the newspaper departments (R. 612); that there were repeated violations of the overtime provisions in both departments (R. 612–613); and that the pay-roll records were inadequate and inaccurate (R. 613).

The district court, accordingly, decreed that petitioner be restrained from violating the provisions of Sections 15 (a) (2) (prohibiting minimum wage and overtime underpayments), 15 (a) (5) (prohibiting record-keeping violations), and 15 (a) (1) (prohibiting shipment in interstate commerce of newspapers in the production of which any employee of the petitioner was employed at rates below those prescribed by the Act) (R. 632–634).

The circuit court of appeals affirmed the judgment except that it ordered that paragraph 3 of

the district court decree be amended by adding the following proviso: "Provided that nothing herein shall prevent or prohibit the defendant [petitioner] from shipping, delivering, transporting, or offering for transportation or sale its newspapers in interstate commerce or otherwise" (R. 651, 659).[4]

ARGUMENT

1. Petitioner's contention that the First Amendment precludes application of the Fair Labor Standards Act to newspapers is foreclosed by *Associated Press* v. *National Labor Relations Board*, 301 U. S. 103,[5] which holds that a general non-

[4] We believe that the circuit court of appeals erred in amending the decree entered by the district court so as to eliminate that part of the injunction which restrains shipment of petitioner's papers across State lines. We do not, however, ask this Court to review that portion of the judgment because it has no practical significance in the instant case. The public interest is adequately protected by the provisions of the decree which enjoin petitioner from violating Sections 6, 7, and 11 of the Act. If those portions of the decree are complied with, there will be no "hot goods," the shipment of which would be unlawful under Section 15 (a) (1).

We point this out because in other cases an injunction restraining the shipment of "hot goods" might be important. For example, the only conduct expressly declared unlawful in Section 12, dealing with child labor, is the shipment of goods produced in an establishment in or about which oppressive child labor has been employed; there is no express prohibition against the *employment* of oppressive child labor in the production of goods for commerce.

[5] See also *National Labor Relations Board* v. *A. S. Abell Co.*, 97 F. (2d) 951 (C. C. A. 4); *Patterson* v. *Colorado*, 205 U. S. 454; *Ex parte Jackson*, 96 U. S. 727; *Lewis Publishing*

discriminatory, regulatory law may be applied to the press. There is obviously no difference in this respect between the National Labor Relations Act and the Fair Labor Standards Act.

This principle is not rendered inapplicable because of the provision in Section 13 for the exemption of certain industries and certain types of employees. A statute of general application does not lose its character as a general law because of exemptions which in no way affect the press. As long as the Act does not discriminate against the press, it is immaterial whether or not it covers business universally.

2. Petitioner argues that the application of the Act to it violates the First and Fifth Amendments because of the clause exempting "any employee employed in connection with the publication of any weekly or semiweekly newspaper with a circulation of less than three thousand the major part of which circulation is within the county where printed or published" (Section 13 (a) (8)). In this connection petitioner states that its newspaper competes with

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Co. v. *Morgan*, 229 U. S. 288; *Indiana Farmer's Guide Publishing Co.* v. *Prairie Farmer Publishing Co.*, 293 U. S. 268; *Press Co.* v. *National Labor Relations Board*, 118 F. (2d) 937 (App. D. C.); *United States* v. *Associated Press*, 52 F. Supp. 362 (S. D. N. Y.; appeals to this Court taken); *Fleming* v. *Lowell Sun Co.*, 36 F. Supp. 320 (D. Mass.), reversed on other grounds, 120 F. (2d) 213 (C. C. A. 1), affirmed *per curiam*, 315 U. S. 784.

fourteen such weekly papers published in the vicinity of Jackson (Pet., p. 19).[6]

Section 13 (a) (8) was intended to apply to the "little country publisher", an "infinitesimal bit" of whose business goes outside of the state, "when on each side of this little printshop are the butcher and the baker, who are exempt and who are financially better fixed than he is" (83 Cong. Rec. 7445). Such a classification cannot be regarded as arbitrary or unreasonable in violation of the Fifth Amendment.[7] *Carmichael* v. *Southern Coal and Coke Co.*, 301 U. S. 495, 510; *Steward Machine Co.* v. *Davis*, 301 U. S. 548, 584; *Tigner* v. *Texas*, 310 U. S. 141; *Currin* v. *Wallace*, 306 U. S. 1, 13–14; *Florida Fruit and Produce Inc.* v. *United States*, 117 F. (2d) 506 (C. C. A. 5).

Nor does such a classification violate the First Amendment. Neither its purpose nor its effect is to interfere with freedom of the press. The case thus clearly differs from *Grosjean* v. *American Press Co.*, 297 U. S. 233, which petitioner claims to be in conflict. The license tax on soliciting advertising imposed on newspapers with a circula-

[6] The record shows that these weeklies were published in towns from seventeen to forty-five miles from Jackson (R. 451), but is otherwise silent as to the extent of the competition, if any, between them and petitioner. It does not appear that any of these weeklies have an interstate circulation.

[7] The Fifth Amendment contains no equal protection clause. *Steward Machine Co.* v. *Davis*, 301 U. S. 548, 584; *LaBelle Iron Works* v. *United States*, 256 U. S. 377, 392; *Helvering* v. *Lerner Stores Co.*, 314 U. S. 463, 468.

tion of over twenty thousand was regarded in the *Grosjean* case as a "calculated device in the guise of a tax to limit the circulation of information to which the public is entitled in virtue of the constitutional guaranties" (p. 250). None of the factors which led the Court to that conclusion is present here. A general regulatory statute may contain reasonable classifications applicable to newspapers as long as there is no abridgment of the freedom of the press.

3. Petitioner claims that the decision below is in conflict with *Schroepfer* v. *A. S. Abell Co.,* 138 F. (2d) 111 (C. C. A. 4), certiorari denied January 27, 1944; that petitioner's employees were not engaged in commerce or the production of goods for commerce within the meaning of the Act; and that if they were, the commerce involved was so small as to bring the case within the *de minimis* doctrine.

There is no basis for the claim that the decision of the court below is in conflict with that of the circuit court of appeals in the *Schroepfer* case. It was there held that local distributors of a newspaper, after it is printed, are not engaged in commerce or the production of goods for commerce. The Fourth Circuit Court of Appeals pointedly distinguished that case from such a state of facts as is here presented by observing "They [the local distributors] had nothing to do with collecting news, assembling it, printing the

paper, or any other activity in which interstate commerce was involved" (p. 112). In this case the petitioner and its employees were engaged in just such activities as were conceded to be within the scope of the commerce power and the Act in the *Schroepfer* case, and were specifically held to be within the scope of that power and the provisions of the National Labor Relations Act by the same court in *National Labor Relations Board* v. *A. S. Abell Co.*, 97 F. (2d) 951 (C. C. A. 4).

As the district court found (R. 630), those of petitioner's employees engaged in the receiving and handling of news, information, and intelligence from out-of-state sources were in interstate commerce, and those employees engaged in the preparation, printing, and handling of newspapers for regular daily shipment outside the state were engaged in the production of goods for commerce. This conclusion is challenged by petitioner mainly on the ground that less than three percent of the circulation goes to subscribers outside the state. This contention does not, of course, affect those of petitioner's employees who are engaged in interstate commerce. Moreover, this small interstate percentage amounts to two hundred copies per day and approximately sixty-three thousand per year (R. 450), which is hardly *de minimis*. The fact that the proportion of goods produced for

commerce is small is immaterial, as has frequently been held.[8] This interpretation of the Act is supported by a direct statement in the legislative debate,[9] as well as by the recognized need for an exemption if small rural papers with a minute interstate circulation were to be excepted.

4. Exemption is claimed on the theory that inasmuch as a newspaper performs an important public service, it is a "service establishment" to the activities of which the Act is made inapplicable by Section 13 (a) (2). It is

[8] Cf. *United States* v. *Darby*, 312 U. S. 100, 123. This question was treated and the cases cited in the brief for the Administrator in *Walling* v. *James V. Reuter, Inc.*, No. 436, this Term, page 30. In those cases, as in the present case, the significant fact which made inapplicable the *de minimis* doctrine was that "while the volume is small as compared with its whole business it is substantial, and it was not casual or incidental but a part of its regular business." *Muldowney* v. *Seaberg Elevator Co.*, 39 F. Supp. 275, 281 (E. D. N. Y.). Cf. *National Labor Relations Board* v. *A. S. Abell Co.*, 97 F. (2d) 951 (C. C. A. 4), in which 1.7 percent of the daily evening edition of a newspaper and 7.4 percent of the Sunday edition were shipped to destinations outside the State. In holding the publishing company to be subject to the National Labor Relations Act the court said, "It is true the circulation which goes outside the State of Maryland is a relatively small part of the whole, but it nevertheless constitutes in itself a substantial volume of business" (p. 954).

[9] In the debates on the Act, Senator Borah, who was explaining its coverage and expounding its constitutional aspects, assured Senator Glass, in response to his inquiry, that the Act applied to a Virginia newspaper with 20,000 subscribers, all of whom, except for 10 out-of-State subscribers, resided in Virginia (83 Cong. Rec. 9172).

well established, however, that the exemption was intended to apply only to the typical service trades such as barber shops, beauty parlors, shoe shining parlors, clothes pressing clubs, laundries, automobile repair shops, hotels, restaurants, garages, and repair shops. It does not apply to processing plants merely because the product "serves the public." *Fleming* v. *A. B. Kirschbaum Co.*, 124 F. (2d) 567, at 571–572 (C. C. A. 3), affirmed, 316 U. S. 517. Cf. *Lonas* v. *National Linen Service Corp.*, 136 F. (2d) 433 (C. C. A. 6); *Walling* v. *Peoples Packing Co.*, 132 F. (2d) 236 (C. C. A. 10); *Guess* v. *Montague*, 140 F. (2d) 500 (C. C. A. 4); *Wood* v. *Central Sand & Gravel Co.*, 33 F. Supp. 40, 47 (W. D. Tenn.). The term "service" was not intended to be used in its broadest sense, as contended by the petitioner, to exempt public utilities, railroads, gas and electric companies, telephone and telegraph companies, newspapers and the multitude of businesses which perform "services" for the public. *Schmidt* v. *Peoples Telephone Union of Maryville*, 138 F. (2d) 13 (C. C. A. 8).

Furthermore, petitioner's contention that all newspapers are exempt as "service establishments" renders meaningless the exemption of weekly and semiweekly newspapers with less than 3000 circulation the major part of which is county-wide (Section 13 (a) (8)). Manifestly, the explicit exemption of this class of newspaper

imports a purpose to cover those not conforming to the terms of the exemption.

5. Petitioner contends that its employees engaged in gathering, writing and editing the news are exempt from the application of the Act because they are employed in a bona fide professional capacity, and that its working foremen are exempt because they are employed in a bona fide executive capacity under Section 13 (a) (1). The Administrator's definitions of "bona fide executive * * * [or] professional * * * capacity" [10] are attacked as "arbitrary, capricious and unreasonable and contrary to the custom of the business" (Pet., p. 27).

Section 13 (a) (1) authorizes the Administrator to define employees "in a bona fide executive, administrative, [or] professional capacity." Briefly, the regulations [11] define an "employee

[10] 29 CFR, 1940 Supp. 541.1, 541.3, printed in the Appendix to petitioner's brief, pp. 49–55.

[11] The regulations were issued on October 24, 1940 after considerable experience with previous regulations covering the subject. The Administrator had the advantage of a "Report and Recommendations" of a Hearing Officer (R. 469; Plaintiff's Exhibit No. 24; see U. S. Dept. of Labor, Wage and Hour Div., "*Executive, Administrative, Professional * * * Outside Salesman" Redefined* (U. S. Govt. Printing Office (1940)), which sets forth the considerations which were weighed in making the recommendations contained therein. Hearings were held during 14 days in 1940 after notice had been given to interested persons and groups. Among the appearances noted were 127 representatives of employers and employers' associations and 34 representatives of employee

employed in a bona fide executive * * * capacity," to whom the minimum wage and overtime provisions of the Act do not apply, as an employee (1) whose primary duty consists of management of the establishment or of a recognized department thereof, (2) who customarily and regularly directs the work of other employees, (3) who has authority to hire and fire other employee or whose recommendations in such matters are given particular weight, (4) who customarily and regularly exercises discretionary powers and (5) who performs not more than 20 percent work of the same nature as that performed by non-exempt employees. "Employee employed in a bona fide * * * professional * * * capacity" is defined as an employee (1) whose work is predominantly intellectual and varied in character, not routine mental, manual or mechanical (2) whose work requires the consistent exercise of discretion and judgment, (3) whose output cannot be standardized in relation to a given period of time, (4) who does not perform more than 20 percent work of the character performed by non-exempt employees, unless such work is essential or incidental to work of a professional

groups. A full opportunity to testify and cross-examine witnesses was afforded and many briefs and memoranda filed. The attorney for petitioners was present at the hearings and was given an opportunity to express his views (R. 470, 471, 473).

character, (5) whose work requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education, or whose work is predominantly original and creative in character in a recognized field of artistic endeavor, and (6) who is compensated at a salary of not less than $200 per month.[12]

Every circuit court of appeals confronted with the question of whether the Administrator's regulations are valid has upheld them. *Walling* v. *Yeakley,* 7 Wage Hour Rept. 61 (C. C. A. 10, 1944); *Fanelli* v. *United States Gypsum Co.,* 7 Wage Hour Rept. 214 (C. C. A. 2, 1944); *Knight* v. *Mantel,* 135 F. (2d) 514 (C. C. A. 8); *Joseph* v. *Ray* 139 F. (2d) 409 (C. C. A. 10); *Helliwell* v. *Haberman,* 7 Wage Hour Rept. 282 (C. C. A. 2, 1944); *George Lawley & Son Corp.* v. *South,* 140 F. (2d) 439 (C. C. A. 1, 1944). The legislative delegation of power to the Administrator was valid (*Yakus* v. *United States,* No. 374, this Term, 1943, decided March 27, 1944), the regulations are reasonable and have a basis in fact, and are therefore, "as binding on the courts as if they had been directly enacted by Congress." *Fanelli* v. *United States Gypsum Co., supra,* at p. 215. Cf.

[12] Doctors and lawyers validly licensed to practice and actually engaged in practice are excepted from the salary requirement.

Federal Security Administrator v. *Quaker Oats Co.*, 318 U. S. 218; *United States* v. *Bush & Co.*, 310 U. S. 371, 380; *Gray* v. *Powell*, 314 U. S. 402. Nor was it unreasonable to apply the regulations so as to hold that a reporter was not a "professional" employee, or that a foreman who spent about eighty percent of his time performing mechanical work (R. 619), as distinct from supervisory functions, was not an executive.

6. The petition for certiorari asserts that the violations of the record-keeping regulations were due to the fact that petitioner's employees disregarded its explicit instructions, and that petitioner cannot be held responsible for such violations (Pet. p. 10). This argument ignores the finding of the District Court, fully supported by the evidence, that petitioner "instructed employees to turn in a specified number of hours each week" (R. 613, 155, 177–178, 216, 217, 234, 247, 311, 328, 387–389, 428–429, 441); that this "was frequently less than the number of hours they actually worked, and less than the time required to perform their assigned duties" (R. 613, 160, 177–178, 217, 218, 220, 232, 248, 264–266, 312, 326–328, 392, 441); that when an employee's time slip showed hours worked in excess of the number specified by the company "the fact * * * was called to the employee's attention by the defendant's cashier, and same was changed to show the lesser number of hours specified" (R. 614, 615,

155, 233, 307); and that it repeatedly erased and changed its payroll records (R. 613, 77, 81, 82-91). Although the court also found that "the proof fails to disclose the defendant knowingly made false records" (R. 613), proof of wilfulness is not indispensable to the granting of an injunction, as distinct from a criminal conviction. Compare Sections 16 (a) and 17.

CONCLUSION

There is no conflict of decisions and the decision below is clearly correct. The petition for the issuance of the writ of certiorari, therefore, should be denied.

Respectfully submitted.

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